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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASSURED GUARANTY CORP.,

No. 12 Civ. 1945 (LLS)

Plaintiff,

- against -

EMC MORTGAGE LLC, formerly known as EMC
MORTGAGE CORPORATION,

CONFIDENTIALITY
STIPULATION AND
PROTECTIVE ORDER

Defendant.

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Assured Guaranty Corporation ("Assured") and EMC Mortgage LLC (formerly known as EMC Mortgage Corporation) ("EMC"), by and through their respective counsel, hereby agree and stipulate to the following provisions concerning the confidentiality of certain information, testimony, and documents obtained during discovery in this action:

WHEREAS, on March 15, 2012 Assured filed a complaint in this Court against EMC in the above-captioned proceeding;

WHEREAS, Assured and EMC (the "Parties" and each a "Party") contemplate that each shall seek and produce documents, testimony, information, or other materials that contain or relate to confidential, competitive, proprietary, or trade-secret information, and/or nonpublic personal identifiable information ("PII") relating to borrowers and/or consumers, including any "nonpublic personal information," as that term is defined in Section 509(4) of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6809 (the "Act"), and/or documents or data that constitute "consumer reports," as that term is defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681a,

that may have been collected or produced in connection with obtaining a mortgage loan, of or held by a Party or non-party (collectively referred to as "Confidential Materials");

WHEREAS, the Parties desire to (i) expedite the flow of discovery, (ii) establish a mechanism to protect the disclosure of Confidential Materials, and (iii) avoid disputes relating to the disclosure of Confidential Materials or facilitate the prompt resolution thereof;

WHEREAS, the Parties desire to establish a mechanism to protect from disclosure, and to govern the treatment and preserve the privileged or protected status of inadvertently produced, privileged, and/or work-product-protected materials ("Privileged Materials");

WHEREAS, the Parties desire that the production of PII pursuant to the terms of this confidentiality stipulation and protective order ("Order") is allowed for and is in compliance with the provisions of the Gramm-Leach-Bliley Act, and specifically, but not limited to, 15 U.S.C. § 6802(e)(8) thereof; and

WHEREAS, the Parties desire that the protections, rights, and obligations set forth in this Order shall govern the production of Confidential Materials by non-parties as well as the Parties, without the need for amendment or further orders by the Court.

IT IS THEREFORE HEREBY STIPULATED AND ORDERED:

1. **Scope:** This Order shall apply to all information and documents provided by either Party or any non-party, either voluntarily or pursuant to a request for the production of documents or a subpoena *duces tecum*, in the course of this action, whether written, electronic, oral, or visual, and whether contained in documents, transcripts, or otherwise. The protections, rights, and obligations afforded or required by this Order shall apply equally to both non-parties' and the Parties' production of Confidential Materials.

2. **Designation of Confidential Materials and Bulk Designations:**

a. A party may, subject to the provisions of this Order, designate as CONFIDENTIAL any Confidential Materials (including any portion thereof and any summaries, abstracts, or other information derived therefrom) it in good faith considers are entitled to that designation. To designate documents CONFIDENTIAL, the producing party shall stamp such documents with a "CONFIDENTIAL" marking. To the extent marking is impossible or impractical (such as with documents produced in native electronic form), the producing party shall designate in writing the information or material it regards as CONFIDENTIAL at the time of production.

b. To designate testimony given at a deposition as CONFIDENTIAL, a party may make a statement to that effect on the record during the deposition. A party also may designate such transcript or recording, or any portion thereof, including exhibits, as CONFIDENTIAL by notifying Assured and EMC, in writing, of the specific pages and lines of the transcript or recording that should be treated as CONFIDENTIAL within 30 days of receipt of a transcript or recording of a deposition. During such 30-day period, all transcripts, recordings, and exhibits from depositions that were not otherwise designated CONFIDENTIAL during the deposition shall be treated as CONFIDENTIAL under the terms of this Order.

c. To designate information contained in a response to interrogatories or requests for admission as CONFIDENTIAL, the responding party shall (i) include a statement at the conclusion of such response specifying the answers or parts thereof deemed CONFIDENTIAL and (ii) place on the first page of any such response and on each succeeding page containing information designated as CONFIDENTIAL a stamp with a "CONFIDENTIAL" marking.

d. In order to expedite production of voluminous loan-origination and loan-servicing files, a Party (or affiliate of a Party) may, at its sole option, produce such materials without a detailed, or any, review (including a review to determine whether a privilege or other immunity from discovery, or a confidentiality designation, applies to some of the documents), subject to the “clawback” procedures in this Order (Section 7) or otherwise agreed to. In doing so, the Party or its affiliate may designate those collections of documents that by their nature contain Confidential Information with the appropriate designation notwithstanding that some of the documents within the collection may not qualify for such designation. Further, pursuant to Rule 502(d) of the Federal Rules of Evidence, if, with respect to productions of voluminous loan-origination and loan-servicing files made pursuant to this subparagraph 2(d), a Party or its affiliate notifies the other Party that it, for any reason, disclosed documents or information that are protected from disclosure under the attorney-client privilege, work-product doctrine, and/or any other applicable privilege or immunity from disclosure, or the receiving party discovers such disclosure (in which case the receiving party shall give the producing party prompt notice), the disclosure, pursuant to Rule 502(d), shall not be deemed a waiver in this litigation or in any other federal or state proceeding of the applicable privilege or protection.

3. **Event of Disagreement:**

a. Notwithstanding any provisions of this Order, in the event of a disagreement as to whether materials have been properly marked and designated CONFIDENTIAL, the party asserting that the materials are entitled to such designation shall have the burden of proving that the information at issue is entitled to the protection of this Order.

b. Confidential Materials shall not include any documents, testimony, information, or other materials that: (i) have been or become lawfully in the possession of any

party through communications other than in production in this action, including, but not limited to, as a result of legitimate business dealings by or between the parties, unless such information or documents are covered by separate non-disclosure or confidentiality obligations, in which case the parties may continue to use such information or documents in the course of their respective business subject to those separate obligations; or (ii) have been or become part of the public domain by publication or otherwise, and not due to any act or omission unauthorized under this Order on the part of any party hereto or any of its authorized representatives or designees.

4. **Failure to Designate:** Inadvertent failure to designate Confidential Materials as CONFIDENTIAL at the time of production shall not be deemed a waiver of the producing party's right to so designate the material, and may be remedied by supplemental written notice. If such notice is given, all material so designated shall be subject to this Order as if it had been designated as CONFIDENTIAL at the time of production. After a designation is made in accordance with this paragraph, the producing party shall re-produce the Confidential Materials with a CONFIDENTIAL mark, and all previously produced copies shall be destroyed.

5. **Use of Confidential Materials:**

a. Subject to subparagraph 5(b) below, material designated as CONFIDENTIAL may be disclosed only to (i) the Parties (including current officers, directors, and employees where disclosure is reasonably necessary for this litigation); (ii) the Parties' outside counsel; (iii) former officers, directors, and employees of the Parties to whom disclosure is reasonably necessary for this litigation and who have signed the Non-Disclosure Agreement (Exhibit A hereto); (iv) experts and consultants retained by the Parties or their counsel in connection with this action; (v) the Court, Court personnel, and court reporters employed in this

action; (vi) outside vendors, such as copy services, computer services, or litigation-support services, to the extent necessary for the prosecution or defense of this action or compliance with a subpoena served in this action; (vii) author(s) and recipient(s) of the document who received the document prior to its production in this action; (viii) trial and deposition witnesses; and (ix) any other person agreed to by the Parties or where required by law (including, but not limited to, for purposes of complying with a subpoena pursuant to subparagraph 5(g) below).

b. Confidential Materials shall not be disclosed to any person described in subparagraph 5(a)(iv) until: (i) the Party seeking disclosure has notified the designating party of the person's identity and current place of employment (and if none, the person's last place of employment), and provided 3 business days' notice to allow the designating party an opportunity to object to the disclosure and, within 7 additional calendar days, to seek appropriate protection from the Court, (ii) the designating party has not objected within 3 business days or its objection has been denied by the Court, and (iii) such person has been shown a copy of this Order and has first agreed in writing to be bound by its terms by executing the Non-Disclosure Agreement attached hereto as Exhibit A. If an objection is made to the Court, pending a ruling on such objection, no disclosure of Confidential Materials may be made to a person described in subparagraph 5(a)(iv).

c. If a Party wishes to submit Confidential Materials to the Court, that Party shall, unless directed by the Court to do otherwise, submit such Confidential Materials under seal by filing it in a sealed envelope or other appropriate sealed container, which envelope or container shall be marked "CONFIDENTIAL MATERIALS FILED UNDER SEAL."

d. Whether or not designated as Confidential Materials, all documents, deposition testimony, and other information that are received from another party in

the course of this action (other than information that is publicly available other than by reason of having been filed with the Court in this action) shall be used by the Parties to whom the information is provided solely for purposes directly related to the prosecution or defense of this action, or compliance with a subpoena therein, and not for any business, competitive, or governmental purpose or function whatsoever, or in connection with any other action or proceeding, unless otherwise agreed to by the Parties.

e. Any summary, compilation, notes, excerpt, copy, electronic image, or database containing Confidential Materials shall be subject to the terms of this Order to the same extent as the material from which such summary, compilation, notes, excerpt, copy, electronic image, or database is made or derived.

f. Confidential Materials may be used to examine or cross-examine any witness at any hearing, deposition, or trial of this action. Each Party shall have the right to request the Court to exclude or sequester any person (other than attorneys and other persons who are qualified recipients of Confidential Materials under paragraph 5(a)) during the disclosure of any Confidential Materials.

g. Any person in possession of Confidential Materials who receives a subpoena or other process in another action or proceeding seeking production or other disclosure of another party's Confidential Materials shall promptly give notice by electronic mail or written notice by overnight delivery or facsimile to counsel for the designating party, enclosing a copy of the subpoena or other process. In no event shall production or other disclosures be made before the later of (i) 10 days following the date on which notice is given, or (ii) the return date of the subpoena, unless otherwise required by applicable law or by court order.

h. The attorneys of record in this action are responsible for employing reasonable measures, consistent with this Order, to control access to, duplication of, and distribution of copies of Confidential Materials.

6. **Unauthorized Use:** If Confidential Materials are disclosed to or come into the possession of any person other than in a manner authorized in this Order, the party responsible for the disclosure shall immediately upon its discovery of such disclosure inform all other parties in possession of such Confidential Materials of all pertinent facts relating to such disclosure and shall make reasonable efforts to prevent further disclosure by each unauthorized person who received the Confidential Materials.

7. **Inadvertent Disclosures of Privileged Materials:**

a. The inadvertent production or disclosure of any Privileged Materials protected by the attorney-client privilege, the work-product doctrine, a joint-defense privilege, or any other applicable privilege, immunity, or protective doctrine (collectively a "Privilege") shall not constitute, or be considered as a factor suggesting, a waiver or impairment of any claims of such Privilege. In the event of inadvertent production or disclosure, the producing party may provide written notice that Privileged Materials have been inadvertently produced or disclosed. Within 7 days of receipt of such notice, any person that has received such Privileged Materials shall, at the producing party's option, return to the producing party or destroy all such material and copies thereof in its possession and shall make reasonable efforts to reclaim and return or destroy all such material.

b. Any Party receiving materials that, on the face, appear to be covered by a Privilege, shall provide prompt notice of the disclosure to the producing party to

afford the producing party the opportunity to designate the materials as inadvertently produced Privileged Materials subject to the clawback provision in subsection 7(a).

8. **No Limitation of Rights:**

a. Nothing herein shall prevent any party from seeking further or greater protection from the Court with respect to the use of any Confidential Materials in connection with this action.

b. Nothing herein shall be construed to affect the admissibility into evidence of any documents, testimony, information, or other materials.

c. Nothing herein shall be construed to limit any party's use of its own Confidential Materials.

d. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

9. **Disclosure of Nonpublic Personal Information:** To the extent any federal or state law or other legal authority governing the disclosure or use of Nonpublic Personal Information (hereinafter, "Nonpublic Personal Information Law") permits disclosure of such information pursuant to an order of a court, this Order shall constitute compliance with such requirement. To the extent any Nonpublic Personal Information Law requires a Party to obtain a court-ordered subpoena or give notice to or obtain consent, in any form or manner, from any person or entity before disclosure of any Nonpublic Personal Information Law, the Court finds that, in view of the protections provided for the information disclosed in this Order, the volume of documents to be produced, and the ongoing oversight of the Court, there is good cause to excuse such requirement, and this Order shall constitute an express direction that the Party is

exempted from obtaining a court-ordered subpoena or having to notify and/or obtain consent from any person or entity prior to the disclosure of Nonpublic Personal Information. To the extent that any Nonpublic Personal Information Law requires that any person or entity be notified prior to disclosure of Nonpublic Personal Information except where such notice is prohibited by court order, the Court directs that, in view of the protections provided for the information disclosed in this Order, the volume of documents to be produced, and the ongoing oversight of the Court, the parties are explicitly prohibited from providing such notice; provided, however, that this Order shall not prohibit either Party from contacting any person or entity for any other purpose. Any Party may seek additional orders from this Court that such Party believes may be necessary to comply with any Nonpublic Personal Information Law.

10. Destruction of Confidential Materials: All Confidential Materials and copies thereof (other than copies of documents filed with the Court and attorney work product) shall, at the option of the receiving party, be either destroyed or returned to the producing parties within 90 days of a final adjudication or other termination of this action, including any appeals. In the event that any receiving party chooses to destroy physical objects and documents, such party shall certify in writing within 120 days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts, and deposition and trial exhibits.

11. Survival: This Order shall continue in effect after termination of this action and continue to be binding on all persons to whom Confidential Materials was provided,

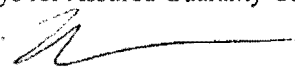
unless otherwise ordered by the Court for good cause, upon the ¹⁰ best notice practicable to the parties, and the fullest practicable opportunity for any affected party or person to be heard.

LLS

12. Execution By Signatures: The Parties agree to be bound by the terms of this Order immediately upon execution by both their counsel.

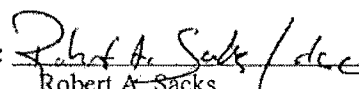
Dated: New York, New York
July 5, 2012

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So Ordered:


Honorable Louis L. Stanton, U.S.D.J.

7/6/12

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASSURED GUARANTY CORP.,

Plaintiff,

- against -

EMC MORTGAGE LLC, formerly known as EMC :
MORTGAGE CORPORATION,

Defendant.

----- X

No. 12 Civ. 1945 (LLS)

CONFIDENTIALITY
STIPULATION AND
PROTECTIVE ORDER

Non-Disclosure Agreement

I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of discovery material that have been designated as CONFIDENTIAL MATERIALS. I agree that I will not disclose such CONFIDENTIAL MATERIALS to anyone other than my staff and other than for purposes of this action and as permitted under the Protective Order and that at the conclusion of the action I will return or destroy, as directed by counsel, all discovery information to the party or attorney from whom I received it. I will instruct my staff not to disclose any CONFIDENTIAL MATERIALS. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Date

Signature

Job Title and Business Address